

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE

GENERAL TRUCK DRIVERS, OFFICE, FOOD &
WAREHOUSE UNION LOCAL NO. 952, AFFILIATED
WITH INTERNATIONAL BROTHERHOOD OF
TEAMSTERS (ALBERTSON'S INC.; RALPHS
GROCERY COMPANY)

and

Case 21-CB-13609

JUAN ANTONIO SALDANA, An Individual

and

Cases 21-CB-13617
21-CB-13930

DANIEL HERNANDEZ, SR., An Individual

and

Cases 21-CB-13618
21-CB-13931

MICHAEL C. MCDONALD, An Individual

and

Case 21-CB-13621

ORLANDO EDWARDS, An Individual

and

Case 21-CB-13645

NANCY BERG, An Individual

and

Case 21-CB-13647

MARIA CURIEL, An Individual

and

Case 21-CB-13650

ANNIE BURKS-BESSETTE, An Individual

and

Case 21-CB-13657

MAUREEN LYNN SLATER, An Individual

and

Case 21-CB-13662

DWIGHT FREELY, An Individual

Case 21-CB-13663

and

TODD ALLEN HURST, An Individual

5 and

Case 21-CB-13675

CYNTHIA LEE, An Individual

and

Case 21-CB-13698

10

JEFF NEVARES, An Individual

and

Case 21-CB-13755

15

FRANK R. RUIZ, An Individual

and

Case 21-CB-13764

SANTOS RIVERA, An Individual

20

and

Case 21-CB-13767

LETICIA MAYA, An Individual

25

and

Case 21-CB-13771

GARRY KENYON, An Individual

and

Case 21-CB-13772

30

VERNON SMITH, An Individual

and

Case 21-CB-13773

35

RON BOROSAK, An Individual

and

Case 21-CB-13774

HEIDEMARIE MAWRIS, An Individual

40

and

Case 21-CB-13775

THERESA TOBAR, An Individual

45

and

Case 21-CB-13776

BRUCE KEIPER, An Individual

and

Case 21-CB-13777

50

CHRIS BECKER, An Individual

Case 21-CB-13778

and

SUSANA PENA, An Individual

5 and

Case 21-CB-13779

RONNIE D. FLYNN, An Individual

and

Case 21-CB-13780

10 DON FALL, An Individual

and

Case 21-CB-13781

15 JERRY HOULIHAN, An Individual

and

Case 21-CB-13783

DALE SLATE, An Individual

20 and

Case 21-CB-13785

ROBINA HUSSEY, An Individual

25 and

Case 21-CB-13787

SANDRA S. MONT, An Individual

and

Case 21-CB-13788

30 TERRY MILNER, An Individual

and

Case 21-CB-13790

35 GARY F. CLARK, An Individual

and

Case 21-CB-13791

RICK LACINA, An Individual

40 and

Case 21-CB-13792

ROCKY AQUINO, An Individual

45 and

Case 21-CB-13793

VINCE PORRETTA, An Individual

and

Case 21-CB-13794

50 SHANA SNYDER, a/k/a SHAWNA
SNYDER, An Individual

	and	Case 21-CB-13795
5	JORGE QUIROZ, An Individual	
	and	Case 21-CB-13796
	FRANK DOSS, An Individual	
10	and	Case 21-CB-13797
	SHEILA SILVER, An Individual	
	and	Case 21-CB-13801
15	JANE LAVIN, a/k/a JANIE LAVIN, An Individual	
	and	Case 21-CB-13803
20	JUSTIN NICOTERO, An Individual	
	and	Case 21-CB-13807
25	ROSALIA NAVARRO, An Individual	
	and	Case 21-CB-13808
	JAMES M. NASH, An Individual	
30	and	Case 21-CB-13812
	RICHARD BUSIC, An Individual	
35	and	Case 21-CB-13813
	ANDRES CAZARES, An Individual	
	and	Case 21-CB-13814
40	HANNA ASRAT, An Individual	
	and	Case 21-CB-13816
45	KEVIN KALMAN, An Individual	
	and	Case 21-CB-13820
50	RUBEN ALMEIDA, An Individual	

and

Case 21-CB-13821

SHERRY KATZ, An Individual

5 and

Case 21-CB-13826

RAHAL ASRAT, An Individual

and

Case 21-CB-13827

10 ELIZABETH BARBA, An Individual

and

Case 21-CB-13830

15 CYNTHIA WYRICK, An Individual

and

Case 21-CB-13831

20 MICHAEL SAUNDERS, An Individual

and

Case 21-CB-13836

ROBERTO ROSALES, An Individual

25 and

Case 21-CB-13958

ROBIN MERRITT, An Individual

30 *Ami Silverman and Patrick Cullen, Esqs.,*
for the General Counsel.

35 *Glenn M. Taubman, Esq., (National Right to Work*
Legal Defense Foundation) of Springfield, Virginia,
for Charging Parties Juan Saldana, Daniel Hernandez,
Sr., and Michael McDonald.

40 *James F. Wallington, Esq., (Baptiste & Wilder, P.C)*
of Washington, D.C. and *Florice Orea Hoffman, Esq.,*
(Law Offices of Florice Hoffman)
of Orange, California, for Respondent.

DECISION

45

Statement of the Case

50 **WILLIAM G. KOCOL**, Administrative Law Judge. This case was tried in Los Angeles, California on January 23-27, 2006. The charge in case 21-CB-13609 was filed on March 29, 2004 and the second order consolidating cases, amended complaint and amended notice of hearing was issued December 19, 2005. The main allegation in the complaint as amended at the hearing is that General Truck Drivers, Office, Food & Warehouse Union Local

No. 952, affiliated with International Brotherhood of Teamsters (Respondent or the Union) violated Section 8(b)(1)(A) by initiating internal disciplinary proceedings, fining, and suspending employees¹ for crossing picket lines without first advising them of their *General Motors* or *Beck* rights. The complaint also alleges that the Union violated that same section by failing to advise employees of those rights. Next, the complaint alleges that Union published a letter that misrepresented to employees that it was their choice whether to cross a picket line and thereafter brought disciplinary proceedings against employees for crossing the picket line. The complaint also alleges that since March 2005 the Union's procedures for *Beck* objectors unlawfully required the objectors to annually renew their objections and unlawfully forbade objectors from objecting in concert with other objectors. Continuing, the complaint contends that the Union failed to provide employees with an adequate explanation of why expenditures for "Per capita taxes – International" and "Per capita taxes – Councils" were for representational activities.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, the Union, and the three of the Charging Parties represented by counsel, I make the following

Findings of Fact

I. Jurisdiction

Albertson's, Inc. (Albertson's), a corporation, is engaged in the operation of retail grocery stores with facilities in La Habra, Brea, and Irvine, California, where it annually derives gross revenues in excess of \$500,000 and purchases and receives goods valued in excess of \$50,000 directly outside the state of California. Respondent admits and I find that Albertson's is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Ralphs Grocery Company (Ralphs), a corporation, is engaged in the operation of retail grocery stores with a facility in La Habra, California, where it annually derives gross revenues in excess of \$500,000 and purchases and receives goods valued in excess of \$50,000 directly outside the state of California. Respondent admits and I find that Ralphs is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Union admits and I find that it is a labor organization within the meaning of Section 2(5) of the Act.

¹ At the hearing I granted the General Counsel's motion to sever and remand to the regional director for settlement the following employees and their respective charges from the complaint: Rickie Currie, 21-CB-13653; Brian Gartner, 21-CB-13677; Robert A. Harlow, 21-CB-13694; Shannon Stradtman, 21-CB-13696; Kevin Storms, 21-CB-13702; Naomi Mestas, 21-CB-13789; Hailey Madris, 21-CB-13815; Don Lenart, 21-CB-13815; and Gerald Hannon, 21-CB-13833. In addition, I dismissed the charge reflected in paragraph 176 of the complaint relating to Gorgonio Mojica. I have amended the caption of this case to delete those ten charges. I granted a motion to dismiss paragraphs 182, 183, 184, and 185 based on Section 10(b). I granted a motion to dismiss employee Michael McDonald from the allegations in paragraph 181 of the amended complaint. A number of the employees named in the complaint did not testify at the hearing; I dismissed those employees from the complaint only as they pertain to paragraph 179(b). Lastly, I granted the General Counsel's motion to amend the complaint by adding allegations concerning Jose Flores and Ronald Shiba. Thus, the employees named in caption plus Flores and Shiba are the employees who remain part of this case.

II. Alleged Unfair Labor Practices

A. Facts

5 The Union represents several units of employees at Albertson's² and Ralphs³ (herein
the bargaining unit employees.) These employees are covered by collective bargaining
agreements that contain union security provisions. The Union spends some of the money it
collects under the union security provisions on both representational and nonrepresentational
10 activities. Between October 2003 and February 2004, Albertson's and Ralphs were involved in
a labor dispute with the United Food and Commercial Workers Union. As part of this labor
dispute UFCW picketed at the Albertson's and Ralphs facilities in La Habra, Irvine, and Brea
facilities where the Union represents certain employees. The Union notified the bargaining unit
employees that it sanctioned the UFCW picket lines. Thereafter, however, a number of
15 employees in the bargaining units represented by the Union crossed the UFCW picket lines and
continued to work. Many of these employees were also full members of the Union and they
crossed the picket lines without first resigning from full membership. The Union initiated internal
disciplinary proceedings against these employees and fined them in amounts varying between
\$200 and \$7400 and expelled them from membership for periods of time varying between ten
20 and fifteen years because they crossed the UFCW picket lines. Respondent never advised
these employees of their *Beck* and *General Motors* rights before they crossed the picket lines.⁴

On November 24, 2003, the Union sent employees a letter entitled "Extension of UFCW
picket lines" that read:

25 Dear Brothers and Sisters:

This is to inform you that the UFCW is extending their picket lines in the grocery industry
to the Distribution Center where you work. Joint Council of Teamsters has sanctioned the
UFCW picket line.

30 Your contract, as it has for more than twenty-five years, continues to provide our
members with certain protections to honor picket lines, despite repeated Employer
efforts to undermine those protections.

35 Specifically, **your Contract protects you from discharge or disciplinary action
should you elect to refuse to cross a lawful primary picket line sanctioned by Joint
Council of Teamsters No. 42.** (emphasis in original) We have determined that the
UFCW picket lines meet those criteria.

40 _____
² They include separate warehouse and shop units at its La Habra, California, facilities, a drivers unit
at its Irvine and La Habra distribution centers, separate shop, grocery warehouse, and produce
warehouse, and office units at its Irvine facility, and separate warehouse, janitors, office, and drivers units
at its Brea, California, distribution center.

45 ³ They include a wholesale delivery drivers unit at its La Habra facility.

50 ⁴ This conclusion is based on the testimony of the witnesses presented by the General Counsel. All
of these witnesses testified that they never were advised of their rights by the Union before they crossed
the picket lines. The Union presented no evidence to rebut this overwhelming testimony. Indeed, the
Union presented no evidence that it made any comprehensive effort to advise the bargaining unit
employees of these rights. A number of employees named in the complaint did not appear at the hearing
and thus did not specifically testify concerning whether the Union also failed to advise them of their rights.
I nonetheless infer and conclude that the Union likewise failed to do so.

If you have any questions regarding the rights and responsibilities of members encountering picket lines which you cannot answer, direct them to your Business Representative. We will be available to answer any questions and are conducting informational meetings throughout this week. The Strike Hotline number is

As you know, we have a Contract in place with your Employer. Our Contracts contain a "No Strike pledge. We cannot call a strike at this time and have no intention of doing so. You, as individuals, however have the ability to express your solidarity with the members of the UFCW, should you choose to do so, when these lawful primary picket lines are established. You may not participate in any picketing or hand billing activity at the UFCW picket lines. You may, however, refuse to cross the UFCW picket lines in support of their effort to attain a fair and equitable contract with your employer.

A number of employees and members who crossed the picket lines later resigned from membership in the Union and became *Beck* objectors after they crossed the picket line.⁵ In about March, 2005, the Union sent nonmembers an explanation of its objector fees process. In order to become a *Beck* objector and pay reduced fees the Union required that:

Objections must be made on an individual basis only. No group objections will be considered. Objections must be renewed annually; there can be no rolling objections.

Employee Daniel Hernandez, Sr., notified the Union that he objected under *Beck* to paying the equivalent of full dues and fees. On March 14, 2004, Hernandez requested the Union to provide him "a full financial statement as how my union dues are being distributed." On September 11, 2004, Hernandez wrote to the Union and again requested a full financial statement of how his dues were being distributed. On March 24, 2005, the Union sent Hernandez sent a check for \$55.49 as a refund resulting from recalculations for chargeable activities for 2003. The Union also provided Hernandez with copies of a notice on nonmember objector fees for 2005, the Union's policy on nonmember objector fees, and an independent auditor's report regarding chargeable and non chargeable expenditures. The notice included the following:

When we include IBT and Joint Council per capita and Local Union expenditures on non-chargeable activities the expenditures for chargeable activities come to ninety-three percent (93%) of the normal full monthly dues. Therefore, a financial core nonmember will be charged ninety-three percent (93%) of the normal full monthly dues and ninety-three percent (93%) of the full amount of any initiation fee assessed in 2005.

⁵ By way of background, initially the Union sent these employees a letter indicating that they had been placed on "financial core" status and the amount the reduced dues. The letter then stated:

In order to be placed on "financial core" status for 2004, please complete the form below and return it to Local 952 between December 1, 2003 and December 31, 2003. Thereafter, you must notify the Local in writing, between December 1st and December 31st each year that you wish to remain a non-member.

The form referred to above read "I wish to remain on 'financial core' status during the year 2004." It had a space for the employee's name and social security number. The form indicated that it had to be received by the Union from December 1, 2003, to December 31, 2003, and that "You will resume regular membership status if Local 952 is not notified within this time frame." However, on April 14, 2004, the Union sent these employees a letter that read, in pertinent part:

This letter is to clarify your status as a "financial core" member. You are indefinitely on financial core status and there is no requirement that you renew your status annually.

This matter is not alleged as a violation in the complaint.

The auditor's report listed "per capita taxes-international" and "per capita taxes-councils" among the description of expenditures made by the Union. The auditor's report identified those expenditures as "mixed" in that they included both chargeable and nonchargeable amounts and set forth the dollar amounts allocated to each category. Later in the auditor's report those amounts were converted into percentages to determine the final percentage of nonchargeable amounts.

B. Legal Overview

Section 8(a)(3) of the Act allows employers and labor organizations to enter into collective-bargaining agreements that contain union-security clauses requiring employees to maintain "membership" in the labor organization. Section 8(a)(3) also allows labor organizations to compel employers to fire nonmember employees covered by a union-security clause, but only if the employees fail to pay periodic dues and initiation fees required by the labor organization. In *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963) the Supreme Court confirmed that the Act does not compel employees covered by a union-security provision to become full members of a union; rather such employees can be fired only if they fail to pay dues and fees to the union. The difference between requiring employee "membership" in a labor organization and requiring employees only to pay dues and fees to a labor organization is significant. Members of a labor organization are generally bound to follow the rules of the labor organization or face internal union discipline. For example, the Supreme Court has held where union rules forbid employees from crossing a picket line, members of that union may lawfully be fined and expelled for doing so. *NLRB v. Allis-Chalmers*, 388 U.S. 175 (1967). But employees who are not members of the union may not be disciplined by the union. It is also settled law that the Act allows employees to resign from membership in a labor organization at any time. *Machinists Local 1414 (Neufeld Porsche-Audi)*, 270 NLRB 1330 (1984); *Pattern Makers League v. NLRB*, 473 U.S. 95 (1985).

In *Communications Workers v. Beck*, 487 U.S. 735 (1988), the Supreme Court held that a union may not require employees covered a union security provision to pay for activities unrelated to collective bargaining or contract administration if those employees are not members of the union and if they object to paying for those activities.

Under section 8(b)(1)(A) of the Act a labor organization may not "restrain or coerce" employees into, among other things, joining or refraining from joining any labor organization. But a proviso to that section explains that nothing in that section "shall impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership." Here the Union has rules forbidding its members from crossing certain picket lines and the General Counsel does not contend that those rules are unlawful. Nor does the General Counsel contend that the Union literally "restrained or coerced" the employees into joining; I find that there is no such evidence in this case. Rather, the General Counsel relies on the "duty of fair representation" that has long been imposed of labor organizations that are tasked under the law with representing an entire bargaining unit and not simply its members in that unit. Under this theory a labor organization that violates its duty to fairly represent all employees in the unit is held to have threatened or coerced employees in violation of Section 8(b)(1)(A). *Miranda Fuel Co.*, 140 NLRB 181 (1962), enf. denied 326 F.2d 172 (2d. Cir. 1963). In *California Saw & Knife Works*, 320 NLRB 224 (1995), the Board considered a union's duty of fair representation in the context of financial core payers and the developing law under *Beck*. The Board extended the duty of fair representation to require labor organizations to provide notice to *nonmembers* of their rights under *Beck* and *General Motors* at the time it seeks to require them to fulfill their obligations under a union security provision. More specifically, as to new employees, the Board held that this notice must be provided at the time the union first

seeks to require them to pay dues. As to current employees who were not previously advised of these rights, the Board held “the union has an obligation to inform them of those rights if it is obligating or seeking to obligate them to pay dues.” *Id.*, at 233. In *Paperworkers Local 1033 (Weyerhaeuser Paper)*, 320 NLRB 349 (1995) the Board examined the obligations to *members* of a labor organization. Relying on its reasoning in *California Saw* the Board concluded that members must also be informed of their *Beck* and *General Motors* rights. As to new employees, the Board again held that this notice must be provided at the time the union first seeks to require them to pay dues. This requirement has no applicability in this case because none of the employees in this case were newly hired. Indeed, none were hired within the six-month statute of limitations set forth in section 10(b) and most were hired before the Board issued its decisions in *California Saw* and *Weyerhaeuser*. As to current members the Board held as follows:

Current members must be told of their *General Motors* rights if they have not previously received such notices in order to be certain that they have voluntarily chosen full membership and a concomitant relinquishment of *Beck* rights.

Id. The Board ordered the union to notify *all* unit employees of their *General Motors* and *Beck* rights. *Id.*, at 350. The Board has recently applied the *Weyerhaeuser* case to a fact situation similar to this case. *International Brotherhood of Teamsters Local 492 (United Parcel Service)*, 346 NLRB No. 37 (2006) involved a situation where several union members crossed a picket line without first resigning from membership in the union. The union informed these employees that disciplinary proceedings had been initiated against them for crossing the picket line. But the union had failed to inform these members, who were covered by a union security clause in a collective bargaining agreement, of their *Beck* and *General Motors* rights. The Board concluded not only that the union violated the Act by failing to inform union members of these rights, the Board also required the union to notify those employees who were still union members at the time they crossed the picket line of their *Beck* and *General Motors* rights and allow those employees to resign retroactively to a date before they crossed the picket line; they could thereby avoid any union discipline for having crossed the picket line. As the General Counsel and three Charging Parties point out, the Board in *United Parcel Service* resolved the issue of whether *Weyerhaeuser* would be applied only in the context of enforcement of union security provisions; the Board has now clearly indicated that the failure to give *General Motors* notices will impact on a union’s action unrelated to job retention or dues collection.

C. Complaint Allegations

1. The complaint alleges that the Union violated the Section 8(b)(1)(A) by failing to advise bargaining unit employees of their rights. More specifically, the complaint alleges that the Union failed to inform these employees (a) that they have the right to be and remain a nonmember; (b) that they have the right as a nonmember to object to paying for nonrepresentational activities and to obtain a reduction in fees for such nonrepresentational activities; (c) that they have the right to be given sufficient information to enable them to intelligently decide whether to object; and (d) that they have the right as a nonmember to be apprised of any internal union procedures for filing objections. At the hearing the Union attempted to show that some employee members became aware of these rights through sources other than the Union. I rejected that contention and reaffirm my ruling; notice must come from the Union. In its brief the Union does not reassert this argument and indeed does not contend that it has complied with the notice requirements. I have concluded above that in fact the Union has failed to advise the bargaining unit employees, including employees who were members of the Union and who crossed the picket lines without first resigning, of their

General Motors and Beck rights. By failing to do so, the Union violated Section 8(b)(1)(A). *Teamsters Local 492 (United Parcel Service)*, supra.

2. The complaint alleges that the Union violated Section 8(b)(1)(A) by taking disciplinary measures against union members and employees who cross the picket lines without first giving them notice of their *General Motors and Beck* rights. The General Counsel does not present any direct case authority to support this contention. Indeed, the Board has not yet extended the *Weyerhaeuser* rationale to such a point. To the contrary, as the Union points out the Board in *IAM Local Lodge No. 504(Arrow Development Co.)*, 185 NLRB 365, 366 (1970) rejected a contention that a union violated Section 8(b)(1)(A) by disciplining an employee who crossed a picket line because that employee was not a voluntary union member because he joined the union solely because of the requirements of a union security provision. In doing so the Board stated:

In *Allis-Chalmers*, a form of union-security clause was also in effect, and it was urged that membership was a result of this requirement and not voluntary choice. The Supreme Court held that the relevant question was not what motivated full membership, so long as full membership existed in fact. The Court stated: “*Allis-Chalmers* offered no evidence in this proceeding that any of the fined employees enjoyed other than full membership. We will presume the contrary.” We regard this holding as dispositive of the issue raised by the Charging Party herein.

This decision must be overruled before I can find the violations alleged here.

In addition, as indicated in the remedy section of this decision I have required the Union to allow employees to resign from membership retroactively, if they so desire, and to rescind the disciplinary measures it took against those employees who choose to resign retroactively. Thus, the matter will be fully remedied. In *United Steelworkers of America, Lodge 14693 (Skibeck, P.L.C.)*, 345 NLRB No. 46 (2005) the Board stated:

We find it unnecessary to resolve the issue of whether the Respondent’s conduct also violated Section 8(b)(1)(A). Such a violation would not add materially to the remedy.

Accordingly, I dismiss this allegation of the complaint.

3. Next the complaint alleges that the November 24, 2003, letter set forth above misrepresented to employees that it was their choice whether to cross a picket line and that the Union thereafter imposed discipline on employees who relied on the letter. I disagree. As the Union points out in its brief, the letter read in its entirety deals solely with the issue of whether the employer may discipline employees for honoring the UFCW picket lines. It cannot be fairly read to cover whether the Union would initiate disciplinary proceedings against its members for failing to do so. The fact that some employees testified that they read the letter differently is not significant; the test in resolving this issue is an objective rather than subjective one. I dismiss this allegation of the complaint. It also follows that the allegation of the complaint contending that the discipline imposed on employees who allegedly relied on the letter is also dismissed.

4. The complaint also alleges that since March 2005 the Union’s procedures for *Beck* objectors unlawfully required the objectors to annually renew their objections and unlawfully forbid objectors from objecting in concert with other objectors. The evidence shows that the Union required employees to file objections to paying full membership dues on an individual basis. By doing so, the Union violated Section 8(b)(1)(A). *California Saw*, 320 NLRB at 236-237. The Union argues that *California Saw* is distinguishable because that case dealt with a

policy that required filing objections by use of individual envelopes; it points out that the Union has no such requirement in this case. I find this argument unpersuasive; the Union's policy directly forbids the filing of concerted objections and this is the violation found by the Board in *California Saw*. The evidence also shows that the Union's objector policy required nonmembers to renew their objections annually. The General Counsel concedes that the Board has not directly addressed this issue but has noted that some courts have approved the annual objection requirement. *Id.* at 236, fn. 62. Counsel for the three Charging Parties cites *Shea v. IAM*, 154 F. 3d 508, 517 (5th Cir. 1998) and *Lutz v. IAM*, 121 F. Supp. 2d 498 (E.D. Va. 2000) as rulings that have struck down an annual requirement. The General Counsel and the three Charging Parties argue that such a requirement is unlawful because it burdens the rights of employees who wish to continue to object to paying full membership dues. To be sure, the requirement creates an additional effort to maintain objector status. Moreover, the Union is unable to provide a sound reason justifying this encumbrance. In the absence of such an explanation, it appears that this restriction is arbitrary and designed only to discourage the exercise of a right protected by the Act. Moreover, it seems that if employees have an unencumbered right to resign from membership, see *Neufeld Porsche-Audi*, *supra*, and *Pattern Makers League v. NLRB* *supra*, so too should they have an unencumbered right to file *Beck* objections. The Union argues that it has not returned employees to non*Beck* status for failing to annually renew their objections. While that may be true, it has given no assurance that it will not enforce this rule in the future. I conclude that by requiring employees to file their *Beck* objections annually the Union violated Section 8(b)(1)(A).

5. Next, the complaint contends that since March 24, 2005, Respondent failed to provide employee Hernandez with an adequate explanation of why expenditures for "Per capita taxes – International" and "Per capita taxes – Councils" were for representational activities. The General Counsel seeks to require the Union to provide objectors with more information concerning how the international and councils spend the dues money the Union sends to them. In making this argument the General Counsel recognizes that current Board law does not support that argument. *International Brotherhood of Teamsters, Local 166, (Dynacorp)*, 327 NLRB 950 (1999), *enf. denied sub nom. Penrod v. NLRB*, 203 F.3d 41 (D.C. Cir. 2000). The General Counsel argues that Supreme Court's decision in *Chicago Teachers Union, Local No. 1, AFL-CIO v. Hudson*, 475 U.S. 292, 307 fn. 18 trumps the Board's decision in *Dynacorp*. The problem with that argument is that the Board considered the *Hudson* decision in *Dynacorp* and concluded that *Hudson* was distinguishable. That conclusion is binding on me. Moreover, the General Counsel has not presented a persuasive argument as to why this precedent should be overturned and a change in the membership of the Board alone is insufficient justification. The three Charging Parties point to language in the Board's conclusions and claim that *Teamsters Local 492 (United Parcel Service)*, *supra* "mandates the finding of a violation concerning these allegations." I disagree. The Board in that case did not decide this issue nor did it even cite *Dynacorp*. Accordingly, I dismiss this allegation of the complaint.

6. At the hearing I dismissed the allegations in the complaint concerning Gorgonio Mojica. The evidence showed that Mojica was never a member of the Union and that the Union dismissed the charges that had been filed against him once it realized that Mojica was not a member. The General Counsel contends I erred and that Mojica's charge should be reinstated. I disagree. In his brief the General Counsel argues that the charges the Union brought against Mojica are unlawful because Mojica was not member. This is precisely the point because the complaint never alleged this theory and the General Counsel never moved to amend the complaint. See *Teamsters Local 492 (United Parcel Service)*, *supra*, where the General Counsel properly pled and proved separate violations of the kind at issue here. Moreover, this type of violation is not closely related to timely filed charges and thus Mojica's charge is barred by Section 10(b). Finally, to the extent that the Union failed to give Mojica and other bargaining

unit employees notice of their *Beck* and *General Motors* rights he is fully covered by the remedial provisions of this decision.

7. In his brief the General Counsel apparently contends that other violations of the Act have occurred. But these matters were not alleged in the complaint and the General Counsel has not moved to amend the complaint to include these matters. Nor does the General Counsel argue that these matters were fully litigated to point that the General Counsel has satisfied its dues process obligations to the Union. I therefore shall not consider those additional contentions. Finally, no evidence was presented to support the allegations in paragraphs 186 and 187 of the complaint that the alleged requests were made. I shall dismiss those allegations.

Conclusions of Law

Respondent violated Section 8(b)(1)(A) by,

- failing to advise unit employees of their *Beck* and *General Motors* rights while maintaining a union-security clause;
- requiring employees to file objections to paying full membership dues on an individual basis;
- requiring employees to file annual objections to paying full membership dues.

Remedy

Having found that Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. To remedy Respondent's failure to advise bargaining unit employees of their *Beck* and *General Motors* rights, I shall order it to provide the required notices to all bargaining unit employees. I shall also order the Union to notify in writing those employees whom it initially sought to obligate to pay dues or fees under the union-security clauses on or after September 29, 2003,⁶ of their right to elect nonmember status and to file *Beck* objections with respect to one or more of the accounting periods covered by the complaint. With respect to any such employees who, with reasonable promptness after receiving the notices, elect nonmember status and file *Beck* objections for any one of those periods, I shall order the Union, in the compliance stage of this proceeding, to process their objections, nunc pro tunc, as it otherwise would have done, in accordance with the principles of *California Saw*. The Union shall then be required to reimburse the objecting nonmembers for the reduction, if any, in their dues and fees for the nonrepresentational activities that occurred during the accounting period or periods covered by the complaint in which they have objected, with interest. There is some evidence that after the employees crossed the picket lines Respondent made efforts to advise employees of these rights, but this matter was not fully litigated. Accordingly, Respondent shall have the opportunity to show, in compliance proceedings, that it has subsequently fully advised all bargaining unit employees of these rights.

I shall also require Respondent to allow employees to resign retroactively to September 29, 2003, a time that preceded the picket lines that some employees crossed. For those employees who choose to do so I shall further require that Respondent cancel, withdraw,

⁶ Respondent, in its brief, concedes that "any remedy of Beck Notice requirements violations are only available from September 29, 2003 forward, the relevant Section 10(b) period in this case."

and rescind all internal union disciplinary measures taken against them for conduct they engaged in after their retroactive resignation.⁷ *Teamsters Local 492 (United Parcel Service)*, supra. The General Counsel and the three Charging Parties contend that the employees cannot be considered voluntary members in the absence of these notices; they therefore argue that the union discipline against the employees should be automatically voided. However, it cannot be presumed that none of these employees would have remained voluntary members of the Union had the notices been given. It may be that all of the employees will choose to resign retroactively, but the notion of “voluntary unionism” is fundamental in applying the Act. Under these circumstances, I conclude that it is preferable for the employees themselves to decide the issue of their membership in the Union rather than have the government make that decision for them.

The three Charging Parties argue that the remedy for *Beck* and *General Motors* violations should date back years and even decades to when the employees first joined the Union. The General Counsel does not seek such a remedy. The Board has long recognized that it can only extend remedies to within the Section 10(b) period. I reject the three Charging Parties argument that the Union’s conduct here constituted fraud or willful concealment so as to suspend that period.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁸

ORDER

The Respondent, General Truck Drivers, Office, Food & Warehouse Union Local No. 952, affiliated with International Brotherhood of Teamsters, its officers, agents, and representatives, shall

1. Cease and desist from

- (a) Failing to inform employees covered by a union security clause of their right under *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963), not to be members of Respondent and the rights of nonmembers under *Communication Workers v. Beck*, 487 U.S. 735 (1988), to object to paying for union activities not germane to Respondent’s duties as the collective bargaining representative of the unit employees, and to obtain a reduction in dues and fees so as not to pay for those activities as more fully described in this decision.
- (b) Requiring employees to file objections to paying full membership dues on an individual basis.
- (c) Requiring employees to file annual objections to paying full membership dues.
- (d) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

⁷ The parties stipulated that the Union has not attempted to collect the fines and no employee has paid the fines that the Union assessed against the employees in this case.

⁸ If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

- 5 (a) Notify, in writing, all bargaining unit employees of their right not to be members, and the rights of nonmembers to object to paying for union activities not germane to Respondent's duties as the collective bargaining representative of the unit employees, and to obtain a reduction in dues and fees so as not to pay for those activities. In addition, this notice must include sufficient information to enable employees intelligently to decide whether to object, as well as a description of 10 any internal union procedures for filing objections.
- 15 (b) Notify in writing those employees whom the Union initially sought to obligate to pay dues or fees under the union-security clauses on or after September 29, 2003, of their right to elect nonmember status and to file *Beck* objections with respect to one or more of the accounting periods covered by the complaint.
- 20 (c) With respect to any employees who, with reasonable promptness after receiving the notices described in paragraph 2(b), elect nonmember status and file *Beck* objections, process their objections in the manner set forth in the remedy section of this decision.
- 25 (d) Reimburse with interest any nonmembers unit employee described in paragraph 2(c) for the reduction, if any, of their dues and fees for the nonrepresentational activities in the manner set forth in the remedy section of this decision.
- 30 (e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all records, including an electronic copy of such records if stored in electronic form, necessary to verify the amounts of back dues and fees to be paid to bargaining unit employees under the terms of this Order.
- 35 (f) Notify all unit employees against whom we implemented disciplinary measures for crossing the picket lines of their right to resign their union membership retroactively, effective prior to the times they crossed the picket lines, and thereby avoid the disciplinary measures.
- 40 (g) Cancel, withdraw, and rescind all internal union disciplinary measures taken against employees who choose to retroactively resign from membership for conduct they engaged in after their retroactive resignation.
- 45 (h) Expunge all records documenting the disciplinary measures of the employees described in paragraph 2(g) and notify the employees in writing that this has been done.

(i) Notify, in writing, all bargaining unit employees that they are not required to file objections to paying full membership dues on an individual basis.

(j) Notify, in writing, all bargaining unit employees that they are not required to file annual objections to paying full membership dues.

(k) Within 14 days after service by the Region, post in English and Spanish at its union offices copies of the attached notice marked "Appendix."⁹ Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 29, 2003.

(l) Sign and return to the Regional Director sufficient copies of the notice for posting by Albertson's, Inc. and Ralphs Grocery Company, if willing, at all places where notices to employees are customarily posted.

(m) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C., May 30, 2006

William G. Kocol
Administrative Law Judge

⁹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain on your behalf with your employer
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT fail to inform employees whom we seek to obligate to pay dues and fees under a union security clause of their right under *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963), not to be members of General Truck Drivers, Office, Food & Warehouse Union Local No. 952, affiliated with International Brotherhood of Teamsters and the rights of nonmembers under *Communication Workers v. Beck*, 487 U.S. 735 (1988), to object to paying for union activities not germane to Respondent's duties as the collective bargaining representative of the unit employees, and to obtain a reduction in dues and fees so as not to pay for those activities.

WE WILL NOT require employees to file objections to paying full membership dues on an individual basis.

WE WILL NOT require employees to file annual objections to paying full membership dues.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL notify, in writing, all bargaining unit employees of their right not to be members, and the rights of nonmembers to object to paying for union activities not germane to Respondent's duties as the collective bargaining representative of the unit employees, and to obtain a reduction in dues and fees so as not to pay for those activities. In addition, this notice will include sufficient information to enable employees intelligently to decide whether to object, as well as a description of any internal union procedures for filing objections.

WE WILL notify in writing those employees whom we initially sought to obligate to pay dues or fees under the union-security clauses on or after September 29, 2003, of their right to elect nonmember status and to file *Beck* objections with respect to one or more of the accounting periods covered by the complaint.

WE WILL, with respect to any employees who, with reasonable promptness after receiving the notices described above in the preceding paragraph, elect nonmember status and file *Beck* objections, process their objections in the manner set forth in the remedy section of this decision.

WE WILL reimburse with interest any nonmembers unit employee described above in the preceding paragraph for the reduction, if any, in their dues and fees for the nonrepresentational activities in the manner set forth in the remedy section of this decision.

WE WILL notify all bargaining unit employees against whom we implemented disciplinary measures for crossing picket lines of their right to resign their union membership retroactively, effective prior to the times they crossed the picket lines, and thereby avoid the disciplinary measures.

WE WILL cancel, withdraw, and rescind all internal union disciplinary measures taken against employees who choose to retroactively resign from membership for conduct they engaged in after their retroactive resignation.

WE WILL expunge all records documenting the disciplinary measures of the employees described in the preceding paragraph and the employees in writing that this has been done.

WE WILL notify, in writing, all bargaining unit employees that they are not required to file objections to paying full membership dues on an individual basis.

WE WILL notify, in writing, all bargaining unit employees that they are not required to file annual objections to paying full membership dues.

General Truck Drivers, Office, Food & Warehouse
Union Local No. 952, affiliated with International
Brotherhood of Teamsters

(Labor Organization)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

888 South Figueroa Street, 9th Floor
Los Angeles, California 90017-5449
Hours: 8:30 a.m. to 5 p.m.
213-894-5200.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 213-894-5229.